

SENATE SUBSTITUTE TO HB1015

AS PASSED SENATE**A BILL TO BE ENTITLED****AN ACT**

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
2 so as to change certain local government provisions with respect to newly created
3 municipalities; to provide for legislative intent; to provide for a limited period of time the
4 offer of sale to certain qualified municipalities of county property used as parks within the
5 geographical boundaries of the qualified municipality; to provide for procedures, conditions,
6 and limitations; to specify additional service delivery strategy requirements regarding
7 garbage and solid waste collection and disposal fees and fire protection services fees; to
8 provide for additional requirements regarding certain special district excess funds; to provide
9 for limitations with respect to the rezoning of territory proposed for inclusion in a new
10 municipal corporation; to provide for the defeasance of the rezoning of territory proposed for
11 inclusion in a new municipal corporation when such rezoning took place after a point in time;
12 to provide for additional limitations and requirements in the event a new municipality is
13 created in a county subsequent to a referendum in which bonded indebtedness is approved;
14 to amend Code Section 48-8-89.1 of the Official Code of Georgia Annotated, relating to
15 distribution of local option sales tax proceeds after certification of additional qualified
16 municipalities, so as to change provisions relating to distribution of tax proceeds; to make
17 provisions for qualified district areas; to define terms; to provide for distribution certificates
18 and distribution formulas; to provide for other related matters; to provide an effective date;
19 to repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

21
22 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
23 by adding new Code sections to read as follows:

24 "36-31-11.1.

25 (a) This Code section shall stand repealed in its entirety on December 31, 2009.

26 (b) As used in this Code section, the term:

(1) 'County's park cost' means the original acquisition cost for any land, including any buildings located thereon at the time of acquisition, for use as a park, plus interest at the rate of 3 percent per annum from the date the county paid any such amounts to the date title to such property is transferred to the qualified municipality pursuant to this Code section.

(2) 'Date of incorporation' means the date the local Act creating a municipality becomes law.

(3) Park means property, including buildings and fixtures located within a qualified municipality and as used by the county to provide park services to territory located within a qualified municipality during the calendar year prior to the date of incorporation of the municipality. Any such properties shall also include equipment and vehicles located at such property or used by county employees working at or stationed at such property as of December 31 of the year prior to the date of incorporation. 'Park' includes any property or facility used for greenspace, recreational purposes, cultural purposes, or educational purposes.

(5) 'Qualified municipality' means any new municipality created by local Act which becomes law on or after January 1, 2008.

(c) It is the intent of the legislature that the residents of a qualified municipality receive full credit for taxes paid for parks to be purchased by the qualified municipality; to assure that qualified municipalities will have the facilities necessary to deliver park services; and to provide certainty as to how the purchase price for such properties will be determined.

(d) The governing authority of the county shall provide to each of the county commissioners and members of the General Assembly whose district includes any portion of a qualified municipality a listing of all county owned properties located in the qualified municipality within 60 days after the date of incorporation.

(e) The county shall not convey, otherwise encumber, move any fixtures or buildings, or enter into any contractual obligations with respect to any park located in the qualified municipality on or after the date of incorporation to the end of the transition period provided in Code Section 36-31-8. The governing authority of the county shall assign to the governing authority of the qualified municipality all of its right, title, and interest in any executory contract respecting any park to be purchased by the qualified municipality. Such assignment shall be effective on the date the municipality assumes ownership of such properties or as otherwise may be agreed between the governing authority of the municipality and the governing authority of the county.

(f) When a qualified municipality is removed from a special district as provided in Code Section 36-31-11, the qualified municipality may elect to purchase from the county any park. The qualified municipality shall provide written notice to the governing authority of

1 the county specifying the properties to be purchased and the date or dates the qualified
2 municipality will assume ownership of such property. Such notice shall be provided with
3 respect to each such property no less than 30 days prior to the date the qualified
4 municipality intends to assume ownership of the property.

5 (g) The purchase price to be paid by the qualified municipality may be determined by
6 negotiation and agreement of the two governing authorities. In that event, all of the
7 county's right, title, and interest in such property shall be transferred to the governing
8 authority of the qualified municipality as provided in such agreement.

9 (h) In the event that the county and the qualified municipality fail to reach an agreement
10 as to the purchase price for any such properties, then the following process is available to
11 the parties:

12 (1) The county or qualified municipality may file a petition in the superior court of the
13 county seeking mandatory mediation. Such petition shall be assigned to a judge, pursuant
14 to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county
15 is located. The judge selected may also be a senior judge pursuant to Code Section
16 15-1-9.2 who resides in another circuit;

17 (2) The visiting or senior judge shall appoint a mediator within 30 days of receipt of the
18 petition. Mediation shall commence within 30 days of the appointment of a mediator.
19 The mandatory mediation process shall be completed within 60 days following the
20 appointment of the mediator. A majority of the members of the governing body of the
21 county and of the qualified municipality shall attend the initial mediation. Following the
22 initial meeting, the mediation shall proceed in the manner established at the initial
23 meeting. If there is no agreement on how the mediation should proceed, a majority of the
24 members of the governing body of the county and of the qualified municipality shall be
25 required to attend each mediation session unless another process is agreed upon. The cost
26 of alternative dispute resolution authorized by this subsection shall be shared by the
27 parties to the dispute pro rata based on each party's population according to the most
28 recent United States decennial census; and

29 (3) If no agreement is reached at the conclusion of the mediation, either the county or the
30 qualified municipality may petition the superior court and seek resolution of the items
31 remaining in dispute. The visiting or senior judge shall conduct an evidentiary hearing
32 or hearings as such judge deems necessary and render a decision with regard to the
33 disputed items. The judge shall consider the following factors to determine the purchase
34 price and shall make specific findings of fact relative to the following factors:

35 (A) The court shall determine a tax ratio by dividing the assessed value of the
36 residential property tax digest for the municipality by the assessed value of the

1 residential property tax digest for the entire special district from which the qualified
2 municipality was removed;

3 (B) The court shall determine a parks asset ratio by dividing the total number of park
4 acres to be purchased by the qualified municipality by the total number of park acres
5 located in the special district from which the qualified municipality was removed;

6 (C) The purchase price for the parks to be purchased by the qualified municipality shall
7 equal the county's park cost; provided, however, that there shall be a presumption that
8 the county's park cost for parks to be purchased by the qualified municipality has been
9 fully paid by the qualified municipality if the tax ratio is equal to or greater than the
10 asset ratio for parks; and provided further that there shall be a presumption that the
11 county's park cost of the parks to be purchased by the qualified municipality has been
12 partially paid by the qualified municipality residents if the tax ratio is less than the asset
13 ratio. The fraction the county's park cost that shall be considered paid shall be
14 determined by dividing the tax ratio by the asset ratio. The qualified municipality shall
15 pay to the county the portion of the county's park cost that has not been paid, which
16 portion shall equal one minus the fraction considered paid; and

17 (D) The purchase price determined in accordance with this paragraph shall be
18 presumed to be correct unless the judge determines that other unusual factors may be
19 considered consistent with the legislative intent expressed in subsection (c) of this Code
20 section. Such unusual factors may include the cost paid by the county for the
21 properties, the presence of facilities or buildings on such properties the value of which
22 is materially disproportionate to the value of the land being purchased, and whether the
23 residents of the qualified municipality will continue to pay taxes after incorporation to
24 repay bonds issued by the county for the facilities or buildings.

25 (i) A qualified municipality may elect to pay the purchase price for one or more county
26 properties amortized over a 25 year period at an interest rate equal to two percentage points
27 less than the legal rate of interest specified in subparagraph (a)(1)(A) of Code
28 Section 7-4-2. If the governing bodies do not reach agreement as to the purchase price to
29 be paid prior to the date the date the municipality intends to assume ownership of such
30 properties as stated in the notice given pursuant to subsection (f) of this Code section, then
31 upon payment of a minimum purchase price of \$5,000.00 into escrow in the registry of the
32 superior court and delivery of written notice from the governing authority of the
33 municipality to the governing authority of the county that the municipality intends to pay
34 the balance of the purchase price over a 25 year period as provided in this Code section,
35 all of the county's right, title, and interest in the parks the qualified municipality elects to
36 purchase shall be transferred to the governing authority of the qualified municipality. Such
37 transfer shall be effective on the date the municipality intends to assume ownership of such

properties as stated in the notice given pursuant to subsection (f) of this Code section. The governing authority of the county shall promptly transfer, execute, and deliver to the governing authority of the qualified municipality such instruments as may be necessary to record the transfer of such right, title, and interest. Upon final determination of the purchase price either by agreement or by the court under subsection (h) of this Code section, the qualified municipality shall either pay the balance due or execute and deliver to the county a note to pay the balance due over 25 years.

(j) In the event a park is transferred by a county to a qualified municipality under this Code section, the qualified municipality shall be prohibited from imposing or collecting user fees from residents of the county in excess of the amount of such fees imposed or collected from residents of the qualified municipality.

(k) Property transferred to a qualified municipality from a county pursuant to this Code section shall not be sold, leased, assigned, or transferred, in whole or in part, to any private person or entity for a nonpublic use other than to the county from which it was transferred. Any such sale to a county pursuant to this subsection shall be on the same terms as the original transfer from the county to the municipality.

36-31-11.2.

(a) A qualified municipality located within a county which has a special district for the provision of fire services shall continue to be part of such special fire district where the local Act creating such qualified municipality so provides or where the governing authority of the qualified municipality, within 30 days of taking office, elects by formal resolution to continue to be part of the special fire district by formal resolution, provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county within ten business days after the date the resolution is adopted.

(b) If a qualified municipality elected initially to remain in a fire services special district, such municipality shall be removed from such fire services special district by adopting a resolution stating its intent to be removed from the district and the date of removal, provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county at least 30 days prior to the date of removal.

(c) If the local Act does not provide that fire services shall be provided through the county special district or if the qualified municipality decides not to continue receiving fire services through the county, the fire services shall be discontinued by the county on the first day of the next fiscal year of the county that begins at least 180 days after the specified notice is received by the county.

(d) A qualified municipality located within a county that charges fees on a periodic basis for the provision of water or sewer services, or both, may elect to continue receiving such services for the same fees charged residents in the unincorporated area of the county. Such election may be set forth in the local Act creating such qualified municipality or be made by resolution of the governing authority of the qualified municipality within 30 days of taking office, provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county within ten business days after the date the resolution is adopted.

(e)(1) A qualified municipality located within a county that charges fees on a periodic basis for the provision of sanitation services, including garbage and solid waste disposal and collection, may elect to continue receiving such services for the same fees charged residents of the unincorporated area of the county. Such election may be set forth in the local Act creating such qualified municipality or be made by resolution of the governing authority of the qualified municipality within 30 days of taking office, provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county within ten business days after the date the resolution is adopted.

(2) Such qualified municipality may elect to terminate sanitation services by adopting a resolution stating the date of removal, provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county at least 30 days prior to the date of removal.

(3) If the qualified municipality decides not to continue receiving sanitation services through the county, the sanitation services shall be discontinued by the county on the first day of the next fiscal year of the county which begins at least 180 days after the specified notice is received by the county."

SECTION 2.

Said title is further amended in Code Section 36-31-12, relating to special districts divided into noncontiguous areas, by revising subsection (b) as follows:

"(b)(1) When a municipal corporation is created by local Act within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county and following the creation of said municipal corporation the special district is divided into two or more noncontiguous areas, any special district taxes, fees, and assessments collected in such a noncontiguous area shall be spent to provide services in that noncontiguous area. Effective January 1, 2006, for the purposes of this Code section, a noncontiguous area located within ten miles of another noncontiguous area may be treated as the same noncontiguous area.

(2) If, on the effective date of this paragraph:

(A) Excess proceeds remain following the expenditure required under paragraph (1) of this subsection; and

(B) All of the area within the special district shall have become incorporated within one or more municipalities,

then the excess proceeds shall be disbursed within 60 days to the governing authority of each municipality which has incorporated any portion of the area of the special district.

The amount of proceeds to be disbursed to each municipality shall be determined on a pro rata basis using as a denominator the total value of all tax parcels within the special district and as a numerator the total value of all tax parcels which were incorporated within each municipality.

(3) If, on the effective date of this paragraph:

(A) Excess proceeds remain from the collection of any special district taxes, fees, and assessments; and

(B) A new municipality shall have been created from within such special district such that the special district shall have been diminished in size but not all of the special district shall have been incorporated within one or more municipalities,

then the excess proceeds shall be disbursed within 60 days to the governing authority of each municipality which has incorporated any portion of the area of the special district.

The amount of proceeds to be disbursed to each municipality shall be determined on a pro rata basis using as a denominator the total value of all tax parcels within the special district and as a numerator the total value of all tax parcels which were incorporated within each municipality."

SECTION 3.

Said title is further amended by adding a new Code section to read as follows:

"36-31-13.

(a) As used in this Code section, the term:

(1) 'Charter' means a local Act of the General Assembly creating or proposing the creation of a new municipal corporation.

(2) 'New municipal corporation' means a new municipal corporation of this state created by or proposed to be created by a charter.

(3) 'Rezoning action' means:

(A) Adoption of a new zoning ordinance;

(B) Adoption of an amendment to a zoning ordinance which has the effect of rezoning real property from one zoning classification to another or changing the permitted use of property;

(C) Granting of a variance, conditional use, or other treatment which has the effect of allowing real property to be used for a use not otherwise permitted under a zoning ordinance; or

(D) Any other action which has the effect of changing the permitted use of property.

(b) During the period commencing with the effective date of charter until the date the new municipal corporation begins exercising planning and zoning powers, no county shall take any rezoning action affecting any part of the territory described in the charter as included or proposed for inclusion within the new municipal corporation unless each member of the board of commissioners whose district is wholly or partially located in the territory described in the charter as included or proposed to be included within the new municipal corporation consents to such proposed rezoning action. This prohibition shall be dissolved if the creation or continued existence of the proposed new municipal corporation under the charter definitively ceases to be possible because of defeat at a referendum election, definitive final failure to secure approval under the federal Voting Rights Act of 1965, as amended, or definitive failure of any other condition specified in the charter.

(c) This Code section shall stand repealed in its entirety on December 31, 2009."

SECTION 4.

Said title is further amended in Code Section 36-82-1, relating to elections and requirements regarding bonded debt, by adding a new subsection to read as follows:

"(e.1)(1) As used in this subsection, the term:

(A) 'Bonds' means any bond to purchase properties or for capital improvements to existing properties or facilities which, at the time of the issuance of the bonds, were to be used by the county for the provision of any of the services listed in Article IX, Section II, Paragraph III of the Constitution of the State of Georgia and, subsequent to the issuance of the bonds, a new municipality took over the provision of such services.

(B) 'Bond proceeds' means the proceeds received by the county as the result of the sale of bonds.

(C) 'Net homestead digest' means for each qualified municipality the total net assessed value of all qualified homestead property located in that portion of a new municipality located in the county remaining after all other homestead exemptions are applied.

(D) 'Total homestead digest' means the total net assessed value of all qualified homestead property located in the county remaining after all other homestead exemptions are applied.

(2) This subsection shall apply only to a new municipal corporation created by local Act within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county. In the event a new municipality lying

1 wholly or partially in such a county is incorporated subsequent to the issuance of any
2 bonds by the county, the governing authority of the county shall pay to the governing
3 authority of the new municipality a portion of the bond proceeds. The amount to be paid
4 shall be determined as follows:

5 (A) If the resolution of the governing authority of the county pursuant to which such
6 bonds were issued specifies the amount to be spent in the area included in the new
7 municipality for the purchase of properties and for capital improvements, then such
8 amount plus a proportionate amount of the interest earned by the county on the bond
9 proceeds prior to the date payment to the new municipality is due, less any credit due
10 under subparagraph (C) of this paragraph shall be paid to the new municipality;

11 (B) If such resolution does not specify the amount to be spent in the area included in
12 the new municipality for the purchase of properties and for capital improvements, then
13 the amount to be paid shall be a portion of the bond proceeds plus a proportionate
14 amount of the interest earned by the county on such proceeds prior to the date payment
15 to the new municipality is due, less any credit due under subparagraph (C) of this
16 paragraph. Such portion shall equal the net homestead digest for the new municipality
17 divided by the total homestead digest;

18 (C) The county shall be given a credit against the amount due under either
19 subparagraph (A) or (B) of this paragraph for any payments that were made:

20 (i) By the county from bond proceeds to any third party prior to the date the payment
21 to the new municipality is due;

22 (ii) Pursuant to a valid contract in existence as of the effective date of the local Act
23 creating the new municipality; and

24 (iii) For the purchase of new properties or for capital improvements in the area
25 included in the new municipality; and

26 (D) The payment determined in accordance with subparagraphs (A) and (B) of this
27 paragraph shall be due ten days after a majority of the members of the initial city
28 council take the oath of office.

29 (3) If the county and municipality fail to reach an agreement as to the amount to be paid
30 or any related matter, either the county or the municipality may petition the superior court
31 and seek resolution of the items in dispute. Such petition shall be assigned to a judge,
32 pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which
33 the county is located. The judge selected may also be a senior judge pursuant to Code
34 Section 15-1-9.2 who resides in another circuit. The visiting or senior judge shall
35 conduct an evidentiary hearing or hearings as such judge deems necessary and render a
36 decision with regard to the disputed items."

SECTION 4A.

Code Section 48-8-89.1 of the Official Code of Georgia Annotated, relating to distribution of local option sales tax proceeds after certification of additional qualified municipalities, is amended by revising subsection (f) as follows:

"(f)(1) As used in this subsection, the term:

(A) 'New qualified municipality' means a municipal corporation which has been chartered by local Act since the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89 within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county where the population of the unincorporated area of the county, after removal of the population of the new municipality from the unincorporated area, constitutes less than 20 percent of the population of the county according to the most recent decennial census.

(B) 'Newly expanded qualified municipality' means a municipal corporation which since the date of filing with the commissioner of the most recently filed certificate under Code Section 48-8-89 has increased its population by more than 15 percent through one or more annexations and is located in the same county as a new qualified municipality.

(C) 'Qualified district area' means a special district for the provision of local government services consisting of the remaining unincorporated area of the county where the population of the unincorporated area of the county, after removal of the population of a new municipality or newly expanded municipality from the unincorporated area, constitutes less than 10 percent of the population of the county according to the most recent decennial census.

(2) Notwithstanding any other provision of this Code section, if there exists within any special district in which the tax authorized by this article is imposed a new qualified municipality, ~~or a newly expanded qualified municipality or both,~~ or qualified district area, or any combination thereof, such qualified municipality or municipalities ~~or qualified district area~~ may request the commissioner to give notice of the qualified municipality's or municipalities' or qualified district area's existence and status as a new qualified municipality, ~~or newly expanded qualified municipality,~~ or qualified district area as provided in this subsection. Upon receipt of such a request, the commissioner shall, unless he or she determines that the requesting entity is not a new qualified municipality, ~~or newly expanded qualified municipality,~~ or qualified district area, within 30 days give written notice of the qualified municipality's or qualified district area's existence and status to the county which is conterminous with the special district in which the qualified municipality or qualified district area is located and to each other qualified

1 municipality within the special district. Such written notice shall include the name of the
2 new qualified municipality, ~~or~~ newly expanded qualified municipality, or qualified
3 district area, the effective date of the notice, and a statement of the provisions of this
4 subsection.

5 (3) Within 60 days after the effective date of the notice referred to in paragraph (2) of
6 this subsection, a new distribution certificate shall be filed with the commissioner for the
7 special district. This distribution certificate shall address only the proceeds of the tax
8 available for distribution from the percentage allocated to the county in the current
9 distribution certificate and shall specify as a percentage of the total proceeds of the tax
10 what portion of the proceeds shall be received by the county in which the special district
11 is located and by the new qualified municipality, ~~and~~ newly expanded qualified
12 municipality, and qualified district area, if any.

13 (4) Except as otherwise provided in this paragraph, a distribution certificate required by
14 this subsection must be executed by the governing authorities of the county within which
15 the special district is located, of each new qualified municipality located wholly or
16 partially within the special district, and of each newly expanded qualified municipality,
17 if any. Except as otherwise provided in this paragraph, a distribution certificate required
18 by this subsection must also be executed by the governing authority of the county within
19 which the special district is located and by the governing authority of the county on
20 behalf of the qualified district area, if any. If a new certificate is not filed within 60 days
21 as required by paragraph (3) of this subsection, the commissioner shall distribute the
22 proceeds of the tax available for distribution from the percentage allocated to the county
23 in the current distribution certificate such that:

24 (A) The new qualified municipality or qualified district area receives an allocation
25 equal on a per capita basis to the average per capita allocation to the other qualified
26 municipalities in the county (according to population), to be expended as provided in
27 paragraph (2) of subsection (a) of Code Section 48-8-89; and

28 (B) Any newly expanded qualified municipality or qualified district receives a total
29 allocation of tax proceeds (including any amount previously allocated) equal on a per
30 capita basis to the average per capita allocation to the other qualified municipalities in
31 the county (according to population), to be expended as provided in paragraph (2) of
32 subsection (a) of Code Section 48-8-89.

33 Every other qualified municipality shall continue to receive the share provided by the
34 existing distribution certificate or otherwise provided by law. The county shall receive
35 the remaining proceeds of the tax, to be expended as provided in paragraph (2) of
36 subsection (a) of Code Section 48-8-89. For the purpose of determining the population
37 of qualified municipalities, only that portion of the population of each such municipality

1 which is located within the special district shall be computed. For the purpose of
2 determining the population of qualified district areas, only that portion of the population
3 of each such district area which is located within the special district shall be computed.

4 For the purpose of determining population under this Code section, all calculations of
5 population shall be according to the most recent decennial census, including the census
6 data from such census applicable to any annexed territory.

7 (5) The commissioner shall begin to distribute the proceeds as specified in the newly
8 filed certificate or, if such a certificate is not filed, as specified in paragraph (4) of this
9 subsection on the first day of the first month which begins more than 60 days after the
10 effective date of the notice referred to in paragraph (2) of this subsection. The
11 commissioner shall continue to distribute the proceeds of the tax according to the existing
12 certificate and the certificate applicable to the county and the new qualified municipality
13 or qualified district area or, if such a certificate is not filed, as specified in paragraph (4)
14 of this subsection until a subsequent certificate is filed and becomes effective as provided
15 in Code Section 48-8-89."

16 SECTION 5.

17 This Act shall become effective upon its approval by the Governor or upon its becoming law
18 without such approval.

19 SECTION 6.

20 All laws and parts of laws in conflict with this Act are repealed.